IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2165 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Petitioner(s)

Versus

GAYATRI T RAGHANI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR NR SHAHANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 29/09/2005

CAV JUDGMENT

1.By filing this petition under Article 226/227 of the Constitution of India, the petitioner – Ahmedabad Municipal Corporation has prayed to issue a writ of

certiorari and/or any other appropriate writ, order or direction quashing and setting aside the impugned award dated 26.11.1998 passed by the Presiding Officer, Labour Court at Ahmedabad in Reference (LCA) No.2086 of 1991.

2. It is the case of the petitioner that the respondent was employed as a junior clerk with effect from 26.09.1984. It is the case of the petitioner that the respondent proceeded on leave with effect from 18.11.1986 to 16.01.1987 by submitting the leave report which was sanctioned by the petitioner and, accordingly, the respondent was required to resume her duty with effect from 17.01.1987, but she did not report for duty and that she did not make any procedure for extension of leave. It is the case of the petitioner that the petitioner addressed letters dated 08.04.1987, 26.05.1987 and 23.06.1987 to the respondent directing her to resume the duty but she did not report for duty. It is the case of the petitioner that the respondent forwarded leave reports on 03.06.1987, 16.11.1987 and 28.07.1988 without giving any reason for proceeding on leave. It is the case of the petitioner that respondent had never bothered to join the duty after 16.01.1987 and the above referred leave reports

submitted by the respondents were not sanctioned. It is the case of the petitioner that inspite of repeated reminders, the respondent continued to remain present after 16.01.1987 and therefore the charge sheet dated 17.08.1988 came to be issued to the respondent at her last known address through Registered Post A.D. It is submitted that the respondent remained absent even during the course of departmental inquiry and hence ultimately the departmental proceedings came to be closed and issued the show cause notice to the respondent. The respondent replied the said show cause notice. It is the case of the petitioner that since the explanation / reply given by the respondent was not satisfactory, she was removed from service by order dated 15.02.1991.

3. It appears from the record that the respondent challenged the said removal order dated 15.02.1991 by way of reference being Reference (LCA) No. 2086 of 1991 before the Labour Court, Ahmedabad. The petitioner appeared and filed detailed reply and also produced necessary record before the Labour Court. Ultimately, the Labour Court, exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, set aside the dismissal order and directed the petitioner to

reinstate the respondent in service without back wages and with penalty of stoppage of one increment without future effect.

4. Being aggrieved and dissatisfied by the judgment and award dated 26.11.1998, the petitioner has preferred the present petition under Article 226/227 of the Constitution of India for the aforesaid relief.

5. It is submitted by the learned advocate appearing for the petitioner that the respondent had submitted the leave report only for the period from 18.11.1986 to 16.1.1987, which report came to be sanctioned by the Corporation and thereafter in spite of repeated reminders, the respondent had remained constantly absent and even during the departmental inquiry, she had remained absent and without considering this material aspect, the Labour Court has passed the impugned order. It is submitted that the conduct of the respondent is nothing but complete disobedience and indiscipline on the part of the respondent which cannot be permitted to be perpetuated for any more time. It is further submitted that the respondent had not attended the departmental proceedings and that there was no justifiable ground for proceeding on leave without sanction by the respondent and therefore, the

Labour Court ought not to have interfered with the order of removal passed by the petitioner. It is therefore requested to allow the present petition.

6. On the other hand, this petition is opposed by the respondent. The affidavit-in-reply is also filed by the respondent. It is submitted by the learned advocate appearing on behalf of the respondent that the Labour Court has delivered the judgment and award exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 and therefore, this Court may not interfere with the judgment and award passed by the Labour Court.

7. I have given my thoughtful consideration to the submissions made by the learned advocates for the parties.

8. It is not in dispute that the respondent proceeded on leave for the period from 18.11.1986 to 16.1.1987 and she was required to report for duty on 17.01.1987. It appears from the record that the respondent did not report for duty from 17.01.1987 in spite of repeated requests made by the petitioner – Corporation. It can be seen from the record that the respondent was totally lethargic and negligent towards her service and till the order of removal, she never reported for duty. It

can also be noticed that when the respondent applied for extension of leave vide her letter dated 30.06.1987, she had not cared to explain as to under what circumstances, extension of leave is required and even thereafter also, she failed to point out as to why the extension of leave was required and thus for a considerable long period, she had not reported for duty.

9. While it is true that this Court cannot ordinarily interfere with the quantum of punishment exercising the powers under Article 226 of the Constitution of India, but there are exceptional cases where the High Court can interfere, particularly, when it is found that the Labour Court has acted arbitrarily. In the present case, the Labour Court has exercised the powers under Section 11-A of the Industrial Disputes Act and passed the order quashing and setting aside the removal order of the respondent, but has not taken into consideration the negligence and lethargy on the part of the respondent. It is pertinent to note that the respondent, though time and again, requested by the petitioner – Corporation has not reported for duty and thus has committed dereliction in discharge of her duty as a junior clerk and, therefore, I am of the

considered opinion that the Labour Court ought to have imposed sufficient penalty while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947.

10. Considering the facts and circumstances of the case, the ends of justice would be met if the judgment and award passed by the Labour Court is modified to the extent that instead of imposing the penalty of withholding of one increment without future effect, the penalty of withholding of four increments with future effect is awarded so that there may have some deterrent effect upon the concerned employee who remains negligent in discharge of the official duties.

11. Under the circumstances, this petition is partly allowed. The judgment and award passed by the Labour Court dated 26.11.1998 which came to be modified subsequently on 30.03.1999 is modified to the extent that instead of imposing the penalty of withholding of one increment without future effect, the penalty of withholding of four increments with future effect is awarded. It is however, made clear that the respondent is not entitled for any back wages. The petitioner – Corporation is directed to reinstate the respondent in service to her original post within a period of two

months from the date of the receipt of the writ of this order.

12. Rule is made absolute to the aforesaid extent with no order as to costs.

(SHARAD D DAVE, J)

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